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DIGBY ADLER GROUP d/b/a BANDAGO

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DIGBY ADLER GROUP LLC,

Plaintiff,

vs.

IMAGE RENT A CAR, INC., et al.,

Defendants.

Case No. 3:10-cv-00617-SC

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO
ENLARGE TIME TO FILE
OPPOSITION AND FOR
CONTINUANCE OF HEARING ON
PLAINTIFF'S MOTION FOR LEAVE
TO FILE ITS FIRST AMENDED
COMPLAINT**

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1 Defendants' counsel has delayed this action for a year now, through the use of
2 myriad fabricated excuses (e.g., documents lost in the mail, snowstorms, undocumented
3 Jewish holidays, inability to contact client, multiple vacations, misplaced documents,
4 emails getting blocked by spam filters). Defendants' counsel has continuously sought
5 extensions of hearings and deadlines while refusing to provide Plaintiff with discovery
6 responses, coming up with excuse after excuse. Nor has Defendants' counsel
7 responded to Plaintiff's letters, emails, and voicemails. In fact, Defendants' counsel
8 never responded to the three communications Plaintiff sent in an effort to meet-and-
9 confer about the filing of the instant motion (had Defendants' counsel bothered to
10 respond to these communications, a different hearing date could have been agreed
11 upon). Instead, Defendants' counsel waited until the day their opposition was due to try
12 to contact Plaintiff's counsel to request a 2-month extension in the hearing date on the
13 motion.

14 Defendants' counsel's dilatory tactics have not been limited to this action. In fact,
15 Defendants' counsel has been sanctioned by the Supreme Court of New York for
16 engaging in precisely the same sort of delays at issue here. The New York Court found
17 that Defendants' counsel's "repeated failure to respond to defendants' discovery
18 demands and/or to comply with this Court's discovery demands coupled with inadequate
19 excuses for those defaults gives rise to an inference that said failure was 'will, deliberate
20 and contumacious.'" (Declaration of Jeffrey M. Rosenfeld in Support of Plaintiff's
21 Opposition to Defendants' Motion to Enlarge Time ¶2 & Exhibit A.)

22 With their ex parte motion, Defendants' counsel has offered yet another excuse to
23 delay this action. At this juncture, the excuses of Defendants' counsel are simply not
24 credible. Defendants seek to continue the hearing on Plaintiff's motion for leave to file an
25 amended complaint by nearly two months. What possible reason could Defendants have
26 for this delay? The only possible explanation is that Defendants seek to push the
27 hearing date closer to the end of discovery, so that Defendants can then argue that they
28

1 would suffer a greater prejudice if leave is granted. Defendants' transparent motivation is
2 ridiculous.

3 As a limited example of Defendants' dilatory practices, as of today, seven months
4 after Plaintiff served Defendants with basic discovery requests, Defendants have refused
5 to provide any substantive responses. During a telephonic hearing on February 8, Judge
6 Zimmerman was appalled by the conduct of Defendants' counsel, and granted Plaintiff
7 leave to file a motion to compel, which Plaintiff intends to file imminently. Judge
8 Zimmerman lambasted Defendants' counsel for his failure to engage in the processes
9 that all attorneys are expected to use in litigating an action—such as responding to meet-
10 and-confer correspondence and agreeing to exchange documents with opposing counsel
11 via email instead of postal mail.

12 Granting Defendants' motion will unfairly delay an already delayed litigation
13 without any justifiable reason.

14
15 DATED: February 11, 2011

Respectfully submitted,

KRONENBERGER BURGOYNE, LLP

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19 BY: /s/ Jeffrey M. Rosenfeld
Jeffrey M. Rosenfeld

20 Attorneys for Plaintiff
21 DIGBY ADLER GROUP d/b/a BANDAGO
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